



DAILY INFORMATION BULLETIN

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Graham Grant's appointment to handle BMFL case justified

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An internal audit team of the Legal Department tasked to examine fees paid to counsel handling the Bumiputra Malaysian Finance Limited (BMFL) case has found the decision to brief Mr Graham Grant to handle the case after he left the Legal Department was justified, the Attorney General, Mr Jeremy Mathews, said today (Monday).

Addressing a meeting of the Legislative Council Panel on Administration of Justice and Legal Services, Mr Mathews said a report submitted by the internal audit team, headed by Deputy Principal Crown Counsel, Mr Kenneth Somerville, also endorsed the decision to brief Mr Grant on a non-standard basis.

The Attorney General said the report found, as a matter of fact, Mr Grant had not on any occasion claimed fees for an 18-hour day.

Of the 762 working days during the period covered by the Report, Mr Grant charged for 13.5 hours or more a day on 23 days, he said.

The review of the fees had also revealed no evidence of payment in excess of the rates agreed nor did it suggest that the hours charged were not worked, apart from \$13,200 which was inadvertently paid and which would be deducted against outstanding payment, he added.

Mr Mathews said the Report noted that the senior management of the Prosecutions Division, Legal department, were concerned at the escalating costs and that some measures were taken which resulted in considerable savings.

On the other hand, Mr Mathews said the Report:

- * believes that the brief fee and fee rates approved for Mr Grant's retainer were over-generous;

- * notes that the main factor influencing the level of Mr Grant's fees was not the fee rates, but the number of hours expended;

- * thinks that Mr Grant's fees should have been capped on a daily and/or monthly basis within six months or so of his appointment;

- * states that the non-inclusion of the Government's instructing solicitors in counsels' fee negotiations resulted in subsequent misunderstanding concerning their terms of engagement and basis of charging;

- * believes that the solicitors were not accorded the requisite control and direction of counsel by the Attorney General's Chambers (AGC);

- * believes that the procedure within AGC for approving the fee notes for payment was flawed;

- * believes that the AGC's internal budgetary control arrangements were inadequate.

On the key issues of fee rates and capping, Mr Mathews said there were sharply divergent views between Mr Somerville on the one hand and the former Director of Public Prosecutions, Mr John Wood, and Mr Grant's solicitors on the other.

Mr Mathews said Mr Somerville, very fairly, pointed out in his Report that the issues concerning arrangements for briefing counsel involved matters of negotiation and judgment in respect of which there were no hard and fast rules and on which lawyers might hold varying opinions and preferences. Mr Somerville also stressed that his comments were based on hindsight.

Mr Mathews added: "This points up this dilemma: how can one make a judgment that is fair, final and conclusive as between those divergent views.

"Mr Wood and Mr (Clive) Grossman were (and are) very senior and experienced criminal lawyers, who were the persons most conversant with the conduct and the progress of this massive case.

"I simply do not believe that it would be right for me, some years after the decisions were reached, to second guess these decisions, decisions on which there can be no hard and fast rules."

Mr Mathews said in order to weigh the respective merits of these differing points of view, it would be instructive to consider in practical terms the effect that a daily cap on chargeable hours might have had.

He said: "Taking seven and a half hours of chargeable time as a reasonable working day and assuming that Counsel worked only 25 days a month and taking the lower Hong Kong court rate of \$15,800 a day for the first 16 months, the total paid to Mr Grant would have been \$15,281,562.

"If the cap had only been imposed after the first six months the amount paid would have been \$16,241,099.

"This is not far off the figure Mr Grant was actually paid (\$17.1 million). And were a cap to have been imposed, one would have had to consider its effect on the hours worked, the progress of the case and possible consequences for manning levels.

"So a cap may not necessarily have been a panacea. It emphasises the dilemma faced by the persons who had to make the decisions at the time," Mr Mathews said.

Putting Mr Somerville's Report into the overall context of the BMFL case, Mr Mathews said by any measure, the work involved in the many strands of this case was of massive proportions.

The Legal Department was concerned to make progress in the case, but not at any price, he said: "For example, it was, at one stage, suggested that the case should have four instead of three counsel. Naturally if that suggestion had been followed, the cost would have been much higher.

"The Report makes clear that efforts were made to contain costs with considerable success," Mr Mathews said.

The Attorney General added that costs savings must not loom so large in the department's consideration that its efforts to uphold the rule of law and the proper administration of criminal justice were seriously weakened.

He said: "It would be a sad day, indeed, if those charged with the heavy responsibility of making decisions to prosecute and implementing those decisions, a responsibility discharged faithfully and conscientiously, are dissuaded from doing their duty because of over zealous inhibitions over cost and fear of being pilloried for doing their duty.

"In saying this, I do not, of course, advocate that any prosecution authority should ignore considerations of cost, good housekeeping and accountability. But one cannot make the pursuit of criminal justice subservient to rigid and formulaic concepts of costs."

On procedural matters under the briefing out system, Mr Mathews said he and his colleagues would carefully study the Report's views on procedures and budgetary control arrangements and would consider the lessons to be learned over the role of solicitors where criminal cases were briefed out.

In relating to briefing out procedures generally, Mr Mathews said Members would be aware that the Director of Audit published a report last week setting out a number of recommendations.

He said: "Both Reports have pointed out areas for improvement which I accept. The Department has in fact already taken measures, since January this year, to improve briefing out procedures."

These measures included:

- * the documentation on file of the reasons for briefing out in each case;
- * the keeping of record of all approaches to counsel for briefing out;
- * the documentation on file of the reasons for selecting of and negotiation with private counsel for non- standard briefing out;
- * the setting up of a selection panel, consisting of two Deputy Crown Prosecutors, responsible for the selection of and negotiation with private counsel for non-standard briefing out;

* the introduction of fee assessment for all standard briefing out cases so that counsel's brief is marked with a fee commensurate with the length and complexity of the case;

* the imposition of a maximum, capped monthly payment, stipulated either on a per counsel basis or per case basis for large and complex cases so that approvals for payments exceeding the limit or the cap have to be given by the Law Officers and brought to the attention of the Attorney General; and

* if payments are made on an hourly basis, which will be exceptional, the private counsel will be asked to submit very detailed record of work done for checking the reasonableness of hours claimed.

Mr Mathews said the Legal department was always mindful to improve the briefing out system and have regularly reviewed its operation.

"I shall study both the Director of Audit's Report and the internal audit team report carefully to see what further improvements should be made," said the Attorney General.

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Law Reform Commission publishes consultation paper on fraud

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The Law Reform Commission today (Monday) published a consultation paper on "Creation of a Substantive Offence of Fraud". The paper has been issued to elicit public comment on the Commission's preliminary proposal that a new offence of fraud should be enacted in Hong Kong.

In announcing the release of the paper, the Secretary to the Commission, Mr Stuart Stoker, explained that at present Hong Kong did not possess a general offence of fraud. He said instead there are a number of specific offences (such as obtaining property by deception) provided in the Theft Ordinance.

Where two or more persons are involved in fraudulent conduct, it is possible to charge them with conspiracy to defraud. In the absence of a specific offence of fraud, however, similar conduct committed by one person acting alone does not amount to an offence unless it falls within the confines of one of the Theft Ordinance offences, he said.

Mr Stoker said there had been criticism of the law both here and in England. It had been pointed out that it was illogical that an act which was lawful if done by one person should become unlawful simply because more than one person has agreed to commit it. There had also been criticism of the breadth of the conspiracy to defraud charge, which potentially covered almost every type of dishonest conduct.

Mr Stoker said while neither England nor Hong Kong have a general offence of fraud, a number of other jurisdictions have had such an offence for many years.

"The experience of those jurisdictions which possess an offence of fraud is that it works well, and can readily be understood by laymen and lawyers alike," he said.

The Commission proposes the creation of a new offence of fraud. This would be committed by a person who by deceit induces another to follow a course of action resulting in either (a) actual or potential prejudice to another or (b) benefit to the person committing the fraud. The person committing the fraud must know or believe that his deceit is false and must intend his victim to act upon it.

The Commission is asking for comments on the paper to be submitted by June 30, 1995. Anyone who wishes a copy of the paper should contact the Secretary to the Commission, fourth floor, Queensway Government Offices, 66 Queensway, Hong Kong. Views on the paper should also be sent to the Secretary at the same address, or by facsimile on 2845 2215.

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Sound regulatory environment in HK: FS

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Hong Kong has established a sound regulatory environment which is beneficial to its continued development as an international financial centre, the Financial Secretary, Sir Hamish Macleod, said this (Monday) evening.

Speaking at a reception to mark the sixth anniversary of the Securities and Futures Commission (SFC), Sir Hamish said Hong Kong's regulatory system was inevitably tested from time to time, most recently in the Barings incident.

"The efficient and effective handling of that problem speaks eloquently for the system of regulation in place, and the store of experience and expertise that has been built up at the SFS, the Exchanges and the clearing houses.

"They have handled the situation speedily and professionally," he said.

Sir Hamish said Hong Kong would face challenges ahead, **not the least of** which was to keep Hong Kong competitive with other markets.

"Meeting this challenge will require an ability to adapt quickly to new market realities and continued vigilance to maintain and enhance the integrity of our market.

"I'm confident that you are all up to that task," he said.

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Feature on revision of the Effective Exchange Rate Indices

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A feature article entitled "Revision of the Effective Exchange Rate Indices for the Hong Kong Dollar" is published in the April 1995 issue of the Hong Kong Monthly Digest of Statistics (HKMDS).

The Effective Exchange Rate Indices (EERI) for the Hong Kong dollar (HKD) compiled by the Census and Statistics Department are indices which indicate the HKD's overall external value against a basket of selected currencies.

A review of EERI has been conducted recently and a new series of EERI has been published since April 1, 1995. The article discusses various concepts in compiling EERI and the revisions made in the new series.

The April 1995 issue of the HKMDS is on sale at \$50 a copy. Purchase can be made at the Government Publications Centre, ground floor, Low Block, Queensway Government Offices, 66 Queensway, Hong Kong.

The publication is also available for sale at the Publication Section of the Census and Statistics Department, 19th Floor, Wanchai Tower, 12 Harbour Road, Wan Chai, Hong Kong.

Regular subscription can also be arranged with the Publication (Sales) Office of the Information Services Department on tel 2598 8194.

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Special arrangements for schools in bad weather

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The Education Department today (Monday) drew the attention of all kindergartens, schools and parents to the arrangements made by the department in the event of tropical cyclones and heavy rain in the summer months.

Under the arrangements, the Education Department will announce the closure of all kindergartens through radio and television stations when tropical cyclone warning signal No. 3 is hoisted.

When a No. 8 or higher signal is issued, an announcement will be made to close all schools for the day.

In the case of rainstorm warnings - operating on a colour coded warning system of green, amber, red and black - the department will make an announcement to close all schools once the "red" or "black" warning is issued.

A spokesman said: "Whenever possible, the department will make the first school closure announcement before 6.15 am for AM and whole-day schools and before 11 am for PM schools and the PM session of whole-day schools.

The spokesman said: "In case students are already on their way to school when No. 3/No. 8 or rainstorm warning signal red/black is issued, schools should arrange with teachers and staff to look after the students until it is safe for them to go home," the spokesman added.

He advised schools to draw up a contingency plan in advance to deal with the closure of schools or suspension of classes owing to rapidly deteriorating weather.

Schools should inform teachers, pupils and parents of all arrangements to be made in bad weather at the beginning of each school year, the spokesman said.

"However, in times of severe local weather affecting road conditions, landslides or unfavourable road traffic conditions, parents should use their discretion in deciding whether or not to send their children to school.

"Principals of kindergartens and schools should also exercise their discretion to close their schools when local weather or road conditions may endanger students' safety on their way to and from schools," the spokesman said.

He advised schools to make alternative arrangements regarding internal tests or examinations for those pupils who could not return to school or were late for schools because of bad weather or adverse road conditions.

Schools should also reassure parents that their children would not be penalised under such circumstances, the spokesman said.

Whenever No. 3 or amber signal issued, the Education Department's Emergency Duty Team will be activated and operated from 5 am to 6 pm on a school day.

Last year, the Education Department Emergency Duty Team was activated 17 times when 14 rainstorm warnings and three tropical cyclone warnings were issued.

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Water storage figure

Storage in Hong Kong's reservoirs at 9 am today (Monday) stood at 65.8 per cent of capacity or 385.709 million cubic metres.

This time last year the reservoirs contained 386.000 million cubic metres of water, representing 65.9 per cent of capacity.

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Flushing water cut in Southeast Kowloon

Flushing water supply to some premises in Southeast Kowloon will be suspended from 10 am on Wednesday (May 3) to 6 am the next day to facilitate maintenance works.

The affected areas include Hung Hom, To Kwa Wan, Kai Tak Airport, Tung Tau, Wong Tai Sin, Lok Fu, Kowloon City, Wang Tau Hom, Chuk Yuen, Kowloon Tong, Kowloon Hospital, Ma Tau Wai and Ma Tau Kok.

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Hong Kong Monetary Authority money market operations

	\$ million	Time (hours)	Cumulative change (\$million)
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Opening balance in the account	2,166	0930	+368
Closing balance in the account	2,438	1000	+368
Change attributable to :		1100	+368
Money market activity	+405	1200	+368
LAF today	-133	1500	+405
		1600	+405

LAF rate 4.25% bid/6.25% offer TWI 118.6 *+0.0* 1.5.95

Hong Kong Monetary Authority

EF bills

EF notes/Hong Kong Government bonds

Terms	Yield	Term	Issue	Coupon	Price	Yield
1 week	6.16	19 months	2611	6.90	100.54	6.63
1 month	6.13	22 months	2702	7.50	101.47	6.73
3 months	6.09	30 months	3710	7.25	100.80	7.01
6 months	6.09	36 months	3804	6.90	99.52	7.21
12 months	6.28	59 months	5003	7.75	100.55	7.75

Total turnover of bills and bonds - \$26,707 million

Closed May 1, 1995

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